

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

*IN RE CEDAR SHAKE & SHINGLE
ANTITRUST LITIGATION*

This Document Relates to:

All Class Actions

No. 2:19-cv-00288-MJP

UNOPPOSED MOTION AND
[REDACTED] ORDER GRANTING
LETTERS ROGATORY RE:
TELEPHONE RECORDS TO ROGERS
COMMUNICATIONS CANADA INC.

I. UNOPPOSED MOTION

Pursuant to Federal Rule of Civil Procedure 28(b)(3) and 28 U.S.C. 1781(b)(2), undersigned Plaintiffs ("Plaintiffs") move this Court for an Order issuing the attached Letters Rogatory to the appropriate authorities in British Columbia, Canada for the telephone records of certain executives and competitors of Defendants in this case. Plaintiffs seek telephone records of telephone calls made to and from executives and competitors of Defendants in Canada. Defendants have been consulted and do not oppose this motion.

Courts have the inherent authority to issue Letters Rogatory and Letters of Request to foreign nations, and may request that the foreign nation order a witness to provide testimony that will aid in the resolution of a matter pending in the United States. *See United States v. Reagan*, 453 F.2d 165, 172 (6th Cir. 1971); *United States v. Staples*, 256 F.2d 290, 292 (9th Cir. 1958). In addition, federal statutes provide for the issuance of Letters Rogatory by a federal court. Under 28 U.S.C. § 1781(b)(2), a tribunal in the United States may directly transmit a Letter Rogatory or

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1 request to a foreign or international tribunal. The British Columbia Evidence Act also provides
2 that a court outside of Canada may serve Letters Rogatory upon a Canadian court. British
3 Columbia Evidence Act, R.S.B.C. 1996, C. 124 § 53.

4 On applications for the issuance of Letters Rogatory, the Court will not ordinarily weigh
5 the evidence to be elicited, nor will the Court determine whether the witnesses will be able to
6 provide the anticipated testimony. *B&L Drilling Electronics v. Totco*, 87 F.R.D. 543, 545 (W.D.
7 Okla. 1978). Rather, “good reason” must be shown for denying the issuance of a Letter
8 Rogatory. *Zassenhaus v. Evening Star Newspaper Co.*, 404 F.2d 1361, 1364 (D.C. Cir. 1968).

9 Here, Plaintiffs seek to obtain telephone records to provide further evidence to prove the
10 allegations in their Second Amended Complaint, namely that the alleged co-conspirators
11 furthered the conspiracy to coordinate price fixing for cedar shakes and shingles over the phone.
12 For example, Plaintiffs allege that Mr. Dziedzic, G & R’s Sales Manager, spoke on the phone
13 with some competitors, either Brooke Meeker of Anbrook Industries or Curtis Walker of Waldun
14 Forest Products, who asked him to raise G & R’s shake and shingle prices. Pl. Liebo’s Second
15 Amended Complaint, ¶ 201.

16 Plaintiffs further allege Defendants Waldun and CSSB “pressure[d] Teal to raise its prices
17 via phone conversations.” *Id.* at ¶ 218. Plaintiffs allege that, “[o]n multiple occasions during the
18 last 10 years, Curtis Walker made calls to Pacific Cedar’s Vice President Kathy Klassen, in which
19 he told her that her company’s cedar shake and shingle prices were too low and urged her to raise
20 those prices to levels recommended by Mr. Walker.” *Id.* at ¶ 219. Plaintiffs allege that “[o]n
21 multiple occasions ... Curtis Walker made calls to Bill Maitland of Goat Lake Cedar in which he
22 asked Mr. Maitland to raise his company’s cedar shake and shingle prices to levels recommended
23 by Mr. Walker.” *Id.* at ¶ 220. Plaintiffs seek phone records of these and other calls to prove their
24 case.

25 Moreover, the issuing of a Letter Rogatory will not be overly burdensome. Plaintiffs seek
26 telephone records of only 56 telephone numbers from January 1, 2011 to the date of collection.

1 These documents are regularly produced by Rogers Communications Canada Inc., as evidenced
2 by the fact that they have a policy for producing telephone records, i.e., one has to submit a filed
3 Court Order in order to obtain copies of records.

4 Further, Plaintiffs have volunteered to pay reasonable fees and judicial costs associated
5 with the requested production of telephone records. Plaintiffs have been informed by Rogers
6 Communications Canada Inc. that they will produce telephone records only pursuant to a filed
7 court Order. Thus, it is necessary to compel production of telephone records through a Letter
8 Rogatory.

9 Defendants do not oppose the issuance of Letters Rogatory compelling the phone records
10 of the executives of defendants in this case listed in the attached Exhibit A. Defendants' non-
11 opposition is made without prejudice to its right to oppose the introduction of any documents or
12 information obtained from Rogers Communications Canada Inc. based on any objection allowed
13 by the Federal Rules of Civil Procedure or other applicable law. Defendants expressly reserve
14 all evidentiary and trial objections. Defendants further reserve the right to obtain from Plaintiffs
15 copies of all documents obtained from Rogers Communications Canada Inc. pursuant to the
16 Letters Rogatory.

17 DATED this 3rd day of December, 2019.

18 **KELLER ROHRBACK L.L.P.**

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II. [REDACTED] ORDER

Upon consideration of the pleadings, declarations, and orders filed to date in this case, the Court finds and orders as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

The Court, having reviewed the submitted material and relevant authority, and therefore being fully informed, GRANTS Plaintiffs' Unopposed Motion and Proposed Order For Letters Rogatory Re Telephone Records and will execute the Letters Rogatory without delay.

IT IS SO ORDERED.

DATED this 6 day of December 2019.



Honorable Marsha J. Pechman
United States District Court Judge